



Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
August 13, 2014

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re: Camella L. Brown,) BK-S-14-12905-ABL
) Chapter 13
Debtor)
) Date: June 26, 2014
) Time: 2:00pm

ORDER TO SHOW CAUSE

On May 16, 2014, Camella L. Brown (“Debtor”) docketed a Motion to Release Funds Taken from Debtor After Filing of Bankruptcy and for Sanctions (“Motion”). (ECF No. 17).¹ The Motion alleges that Debtor’s initial bankruptcy petition in this case was a “skeleton filing, meaning it was missing various schedules, and simply had the bare documents in order to put a automatic stay into place.” (Motion at 1). Two days later creditor Quality Acceptance removed \$235.44 from Debtor’s paycheck, and refused to return the funds even though notified of the pending bankruptcy proceeding. The Motion further notes that the Court may impose sanctions for a violation of the stay. (*Id.* at 2). Debtor, through

¹ In this Order, all references to either “Section” or “Code” shall be to provisions of the Bankruptcy Code, 11 U.S.C. section 101 *et seq.* All references to “Rule” or to “FRBP” shall be to provisions of the Federal Rules of Bankruptcy Procedure. All references to “Local Rules” shall be to the Local Rules of Practice for the United States District Court for the District of Nevada unless otherwise indicated. All references to “ECF No.” are to the number assigned to the documents filed in the bankruptcy case as they appear on the docket maintained by the court clerk.

1 Maggie Strickland (“Strickland”), a nonattorney bankruptcy petition preparer (“BPP”), filed
 2 the Motion. (ECF No. 17). The Motion was typed and prepared by Strickland, as was the
 3 attached proposed order granting the Motion.² The Court hereby sets a show cause hearing
 4 on why Strickland should not be sanctioned and fined for the unauthorized practice of law,
 5 under 11 U.S.C. § 110.
 6

7 The Motion against Quality Acceptance is set forth in nine unnumbered
 8 paragraphs. The paragraphs set forth a brief recitation of the operative facts and, albeit
 9 briefly, legal theory establishing a violation of the automatic stay in Section 362 of the Code.

10 In 1994, Congress enacted Section § 110 “to remedy what was perceived to be
 11 widespread fraud and unauthorized practice of law by nonattorneys who prepared bankruptcy
 12 documents for consumer debtors.”³ 2 Collier on Bankruptcy, 110.01, p. 110-7 (16th ed. rev.
 13 2011) (citing Ferm v. United States Trustee (In re Crawford), 194 F.3d 954 (9th Cir. 1999),
 14 cert. denied, 528 U.S. 1189 (2000)). The act affirmatively restricts the participation of BPPs,
 15 specifically providing for damages for “any fraudulent, unfair, or deceptive act.” 11 U.S.C. §
 16 110(h)(1) (West 2010).
 17

18 The BPP’s role had been described as:
 19

20 ² Strickland also “typed and prepared” Debtor’s bankruptcy petition. Form 201B,
 21 Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer. (ECF No. 1).

22 ³ In enacting Section 110, Congress was concerned that “far too many [BPPs] attempt
 23 to provide legal advice and legal services to debtors. These [BPPs] often lack the legal
 24 training and ethics regulation to provide such services in an adequate and appropriate
 25 manner. These services may take unfair advantage of persons who are ignorant of their rights
 26 both inside and outside the bankruptcy system.” 140 Cong. Rec. H10, 770–01 (daily ed. Oct.
 4, 1994). It is clear that the purpose of Section 110 was to deter bankruptcy petition preparers
 from taking advantage of unsophisticated debtors by requiring, among other things, that the
 petition preparers disclose their identities and the compensation they receive when filing
 documents that they have prepared.

1 A bankruptcy petition preparer can meet a prospective debtor, provide
 2 forms or questionnaires for the debtor to complete without any
 3 assistance from the bankruptcy petition preparer, transcribe the
 4 information supplied by the prospective debtor on the applicable
 5 bankruptcy forms without change, correction, or alteration, copy the
 6 pleadings, and gather all necessary related pleadings to file with the
 7 bankruptcy court. The bankruptcy petition preparer cannot improve
 8 upon the prospective debtor's answers, cannot counsel the client on
 9 options, and cannot otherwise provide legal assistance to the prospective
 10 debtor, directly or indirectly.

11 Meininger v. Burnworth (In re Landry), 268 B.R. 301, 305 (Bankr. M.D. Fla. 2001) (drafting
 12 response to motion to avoid liens under Section 522 was beyond the scope of tasks a BPP
 13 could legitimately complete). Accord, In re Tomlinson, 343 B.R. 400, 405-06 (Bankr. E.D.
 14 N.Y. 2006); In re Powell, 266 B.R. 450, 452 (Bankr. N.D. Cal. 2001) (selection of motion to
 15 avoid lien form by bankruptcy petition preparer constituted the unauthorized practice of law);
 16 In re Gabrielson, 217 B.R. 819, 827 (Bankr. D. Ariz. 1998) (“[P]reparing motions, responses
 17 to motions, objections to claims, responding to the Trustee’s Recommendation, or preparing
 18 any type of pleading, versus the official forms, is the practice of law.”); In re McCarthy, 149
 19 B.R. 162, 166 (Bankr. S.D. Cal. 1992) (“[BPP] can hardly be said to have been acting as a
 20 mere scrivener when he prepared the debtor’s declaration and points and authorities in
 21 opposition to ITT’s motion to dismiss that pleaded [an] affirmative defense.”).⁴ Thus, the
 22 BPP role is narrow, essentially a person who transcribes information supplied by the debtor
 23 onto an applicable bankruptcy form. The BPP “cannot improve upon the prospective debtor’s

24 ⁴ See also, McDow v. Skinner (In re Jay), 446 B.R. 227, 245 (Bankr. E.D. Va. 2010)
 25 (preparation of a Motion to Vacate constitutes the unauthorized practice of law); In re
 26 Amstutz, 427 B.R. 636, 641–42 (Bankr. N.D. Ohio 2010) (preparation and filing “Motion to
 Set Aside Judgment” was the unauthorized practice of law); Gould v. Clippard, 340 B.R. 861,
 875 (M.D. Tenn. 2006); In re Lyvers, 179 B.R. 837, 842 (Bankr. W.D. Ky. 1995) (filing and
 preparation of motion to dismiss and motion to reinstate constituted the unauthorized practice
 of law).

1 answers, cannot counsel the client on options, and cannot otherwise provide legal assistance
 2 to the prospective debtor, directly or indirectly.” In re Landry, supra, 268 B.R. at 305. Courts
 3 have found that a BPP engages in the practice of law when it prepares motions to vacate, to
 4 set aside a judgment and to reinstate a bankruptcy case. See, e.g. In re Jay, supra, 446 B.R. at
 5 245; In re Amstutz, supra, 427 B.R. at 641–42; Gould v. Clippard, supra, 340 B.R. at 875; In
 6 re Lyvers, supra, 79 B.R. at 842.

8 Strickland purports to be a BPP, signing both the Debtor’s bankruptcy petition, the
 9 Debtor’s Motion and the proposed order in that capacity. (ECF Nos. 1 and 17). Preparing and
 10 filing Debtor’s Motion and proposed order meets the definition of BPP under Section 110.⁵

11 Even if Strickland did not charge a separate fee for preparing and filing the Motion,
 12 Strickland is bound by the BPP limitations since failing to charge a fee for filing additional
 13 documents beyond the bankruptcy petition does not excuse overstepping the limitations of
 14 what tasks a BPP can perform. See, In re Boettcher, 262 B.R. 94, 97 (Bankr. N.D. Cal. 2001)
 15 (“[The bankruptcy petition preparer] argues that she was not a bankruptcy petition preparer
 16 as to the motions because she did not charge extra for them. The court does not agree with
 17 this strained reading of the Code. Once [the bankruptcy petition preparer] prepared the
 18 petition for compensation, she became a bankruptcy petition preparer for the case.”).

20 In Nevada, the practice of law is governed by the State Bar of Nevada. N.R.S. §
 21

23 ⁵ Section 110(a) defines a “bankruptcy petition preparer” as a “person, other than an
 24 attorney or an employee of an attorney, who prepares for compensation a document for
 25 filing.” A “person” is defined as an “individual, partnership, and corporation ...” 11 U.S.C. §
 26 101(41) (2010). A “document for filing” is defined as “a petition or any other document
 prepared for filing by a debtor in a United States bankruptcy court or a United States district
 court in connection with a case under this [Title 11].” 11 U.S.C. § 110(a)(2) (2010).

1 7.285 (West 2013).⁶

2 Although a person is entitled to represent himself or herself in the
3 district court, see SCR 44 (“[n]othing in these rules shall be so construed
4 as to prevent any person from appearing in his own behalf in any court in
5 this state except the supreme court”), no rule or statute permits a person to
6 represent any other person, a company, a trust, or any other entity in the
7 district courts or in this court.

8 Salmon v. Newell, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (Nev. 1994).

9 Nevada Revised Statute Section 7.285 provides that no person shall practice law in
10 this state unless they are “an active member of the State Bar of Nevada or otherwise
11 authorized to practice law in this state pursuant to the rules of the Supreme Court.” N.R.S. §
12 7.285(1)(a) (West 2013). The statute further provides that any person who practices law who
13 is not an active member of the State Bar of Nevada is guilty of a misdemeanor. N.R.S. §
14 7.285(2) (West 2013). Practicing law without the appropriate license or court authority may
15 be enjoined through a civil action by the State Bar of Nevada. N.R.S. § 7.285(3) (West
16 2013).

17 The unauthorized practice of law is likewise sanctionable under the Code. Under the
18 Code, if a BPP engages in activity outside the scope of its authority, the BPP may be subject
19 to fines,⁷ injunctive relief,⁸ and damages, including attorney fees. 11 U.S.C. § 110(i) (West
20 2010).

21 In Nevada, the practice of law is implicated:

23 ⁶ Accord, Nevada Rules Professional Conduct, Rule 5.5, Unauthorized Practice of
24 Law (2006).

25 ⁷ 11 U.S.C. § 110(l) (2010).

26 ⁸ 11 U.S.C. § 110(j) (2010).

1 whenever a person is faced with a legal issue that cannot be handled by
2 resort to routine forms or customs, and when the person makes the decision
3 not to rely on his or her own judgment but to obtain assistance from
4 someone else, a stranger to the situation. ... The Ninth Circuit, applying
5 Oregon law, likewise held that “the “practice of law” means the exercise
6 of professional judgment in applying legal principles to address another
7 person’s individualized needs through analysis, advice, or other
8 assistance.” For example, simply providing forms or offering a service to
9 type client-provided information onto the forms was not the practice of
10 law, but advising the client about how to complete a form, e.g., what
11 information to include and on what portions of the form, was the practice
12 of law.

13 In re Lerner, 124 Nev. 1232, 1238-39, 197 P.3d 1067, 1072-73 (2008). Accord, Pioneer Title
14 Ins. Co. v. State Bar of Nevada, 74 Nev. 186, 191, 326 P.2d 408, 410 (explaining that when a
15 person who is not a lawyer and not a party to a transaction gives professional advice or
16 judgment, the unauthorized practice of law is presented); Vincent v. Santa Cruz, 98 Nev.
17 338, 341, 647 P.2d 379, 381 (1982) (providing that generally “contracts made in
18 contravention of the law do not create a right of action”).

19 In the instant case, Strickland prepared and filed the Debtor’s Motion and
20 proposed order granting the Motion. (ECF No. 17) The Motion was articulated using terms
21 of art and concepts well known in the legal profession, for example, “[t]he initial bankruptcy
22 petition filed by Debtor was a skeleton filing, meaning it was missing various schedules, and
23 simply had the bare documents in order to put an automatic stay into place[.]” (Motion at 1).
24 Additionally, the Motion provides that the “Automatic Stay (11 U.S.C. § 362) (a) Operates as
25 a statutory injunction (i.e., no proceeding or proof required) against a variety of acts,
26 generally including (1) the commencement or continuation of actions against the debtor, or
(2) acts that would affect property of the debtor of the estate, but with certain exception.”
(Motion at 2)

1 The court finds it extremely unlikely that the Debtor understood or mentioned to
2 Strickland that this was the language that she wanted to include in her Motion. The court
3 believes it far more likely that Strickland advised the Debtor on how to complete the Motion
4 and what to include in the Debtor's Motion. Providing Debtor with that information is far
5 beyond the realm of a BPP in Nevada. Such actions, if in fact that is what occurred in this
6 case, implicate the unauthorized practice of law.
7

8 Accordingly, a show cause hearing is set for September 17, 2014 at 9:30am to
9 show cause why (1) Strickland should not be sanctioned and / or enjoined from engaging in
10 similar such behavior in the future under 11 U.S.C. §§ 110 (i), (j), and (l); and, (2) the matter
11 should not be referred to the Clark County Prosecutor for potential prosecution under NRS §
12 7.285.
13

14
15 **IT IS SO ORDERED.**

16 Copies noticed through ECF to:
17 Wolf Thompson, Esq.

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